

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DANNY QUINTANIA,

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner of  
Social Security

Defendant.

CASE NO. 06cv2059-L (NLS)

**ORDER**

**(1) ADOPTING REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE;  
(2) DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT;  
(3) GRANTING DEFENDANT'S  
CROSS-MOTION FOR SUMMARY  
JUDGMENT;  
(4) AFFIRMING THE DECISION  
OF THE COMMISSIONER OF  
SOCIAL SECURITY TO DENY  
BENEFITS**

Plaintiff filed the instant action for judicial review of denial of his application for social security disability benefits. He subsequently filed a motion for summary judgment, requesting reversal of the Administrative Law Judge's ("ALJ") finding of no disability. The Commissioner filed a cross-motion. The case was referred to United States Magistrate Judge Nita L. Stormes for a report and recommendation in accordance with 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(c)(1)(c).

Initially Plaintiff alleged he became disabled as of April 1, 2004 due to a heart and blood infection; however, at the hearing Plaintiff testified he was unable to work due to his back pain. Plaintiff's testimony about the severity of his back pain was not supported by medical evidence. Upon review of the record and the parties' motion papers, Judge

Stormes recommended denying Plaintiff's motion and granting the Commissioner's cross-motion. Specifically, she found the ALJ's finding of no disability was based on substantial evidence and was free of legal error. Neither Plaintiff nor the Commissioner filed objections to the report and recommendation.


A district judge "may accept, reject, or modify the recommended decision" on a dispositive matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes. Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Section 636(b)(1) does not require some lesser review by the district court when no objections are filed. *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). The "statute makes it clear that the district judge must review the magistrate judge's findings and recommendations *de novo if objection is made, but not otherwise.*" *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc), cert. denied, 540 U.S. 900 (2003) (emphasis in original).

Accordingly, in the absence of any objections, the report and recommendation is **ADOPTED**. It is hereby further **ORDERED** as follows:

1. Plaintiff's motion for summary judgment is **DENIED**.
2. The Commissioner's motion for summary judgment is **GRANTED**.
3. The Commissioner's decision to deny benefits is **AFFIRMED**.

**IT IS SO ORDERED.**

DATED: August 1, 2007

  
M. James Lorenz  
United States District Court Judge

COPY TO:

HON. NITA L. STORMES  
UNITED STATES MAGISTRATE JUDGE

ALL PARTIES/COUNSEL